

MARQUIS & AURBACH

10001 Park Run Drive
Las Vegas, Nevada 89145
(702) 382-0711 FAX: (702) 382-5816

Marquis & Aurbach

ALBERT G. MARQUIS, ESQ.

Nevada Bar No. 1919

E-mail: amarquis@marquisaurbach.com

JASON M. GERBER, ESQ.

Nevada Bar No. 9812

10001 Park Run Drive

Las Vegas, Nevada 89145

Phone: (702) 821-2427

Fax: (702) 382-5816

E-mail: jgerber@marquisaurbach.com

Attorneys for Defendants Maryland Square

Shopping Center, LLC, the Herman Kishner Trust

dba Maryland Square Shopping Center,

Irwin Kishner, Jerry Engel,

Bank of America, as Trustees for

The Herman Kishner Trust, and

Maryland Square, LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

PETER J. VOGGENTHALER; VICTOR
BECERRA; ARTHUR BODENDORFER;
BRENDA C. CHAFFIN; MICHAEL J. SOLMI;
JASON COWLES; JANE GAUTHIER;
HONORE' GAUTHIER; NIKOLAS
KONSTANTINOU; DRAGAN KURAJICA;
KENNETH LOWTHER; JAMES
LUEHMANN; JACQUELINE LUEHMANN;
RUTH MANNHEIMER; WILLIAM
MONTERO; BARBARA MONTERO;
CLIFFORD ROGERS; SHARON ROGERS;
HERMANN ROSNER; MARKUS
ROTHKRANZ; DANIEL SOLDINI;
CHARLES WALKER; VERA WALKER;
JACK YENCHECK; OFELIA YENCHEK, all
individual and as Plaintiff Class
Representatives,

Plaintiffs,

vs.

AL PHILLIPS THE CLEANER, INC., a Nevada
corporation; DCI USA, INC., a Nevada
corporation; MARYLAND SQUARE, LLC, a
Nevada Limited Liability Company;
MARYLAND SQUARE SHOPPING CENTER
LIMITED LIABILITY COMPANY, a Nevada
Limited Liability Company; DOES I through X;
and ROE corporations XI through XX,

Defendants.

Case No: 2:08-CV-01618-RCJ (GWF)

**MEMORANDUM CONCERNING
DISCOVERY MEET AND CONFER
REQUIRED BY DOCKET NO. 173**

I. INTRODUCTION.

On November 23, 2009, counsel for the Maryland Square Defendants (MSSC), the Shapiro Brothers Defendants and the Plaintiffs met concerning (a) pending discovery disputes, (b) discovery requests that had been stayed during efforts to mediate the case and (c) a schedule for prospective discovery. Counsel agreed at the meet and confer to provide information necessary to submit a joint memorandum to the court summarizing the meet and confer. Unfortunately, the necessary information was not exchanged with sufficient time to complete a joint memorandum. As such, the MSSC Defendants submit this memorandum summarizing its current outstanding discovery as well as additional discovery it anticipates will be necessary.

II. MSSC DEFENDANTS PROPOSED DISCOVERY.**A. DEPOSITONS**

1. Plaintiffs/ Homeowners
2. PMK's - Shapiro Brothers
3. Shapiro Brothers Employees
4. PMK's Dr. Clean
5. NDEP Representatives
6. PMK's Boulevard Mall
7. PMK – Former Boulevard Mall Tenants (Goodyear, JC Penny Automotive, etc)

Shapiro Brothers' position with regard to MSSC proposed Depositions.

MSSC is not aware of any current objections to this proposed discovery at this time. However, MSSC is prepared to discuss objections during the December 8, 2009 hearing.

Plaintiffs' position with regard to MSSC proposed Depositions.

Plaintiffs have previously expressed general objections to the taking of depositions of all the plaintiffs.

MSSC is not aware of any other objections to this proposed discovery at this time. However, MSSC is prepared to discuss objections during the December 8, 2009 hearing.

B. WRITTEN DISCOVERY

1. Plaintiffs will provide responses to written discovery requests no later than January 8, 2010.
2. Possible follow up discovery to Plaintiffs.

3. Demand for production of documents/Interrogatories to Shapiro Brothers.

4. Rule 45 (D) Subpoena to third parties, including Dr. Clean and Boulevard Mall for entry onto land and for testing of ground water and soil at existing monitoring wells and at placement of new monitoring wells.

Shapiro Brothers' position with regard to MSSC proposed Written Discovery.

MSSC is not aware of any current objections to this proposed discovery at this time. However, MSSC is prepared to discuss objections during the December 8, 2009 hearing.

Plaintiffs' position with regard to MSSC proposed Written Discovery.

MSSC is not aware of any current objections to this proposed discovery at this time. However, MSSC is prepared to discuss objections during the December 8, 2009 hearing.

C. EXPERT INVESTIGATION, INSPECTIONS AND DISCOVERY

1. MSSC will provide proposed work plan for continued monitoring and testing of monitoring wells. MSSC proposes to drill additional monitoring wells, including locations of the former Dr. Clean and at Boulevard Mall, as referenced above..

2. MSSC will provide proposed work plan for walk throughs and indoor air sampling of homes owned by plaintiffs.

3. MSSC consultants/experts will meet and confer with consultants/experts for Shapiro Brothers and Plaintiffs for the purpose of reaching consensus on testing protocols.

Shapiro Brothers' position with regard to MSSC proposed Expert Discovery.

MSSC is not aware of any current objections to this proposed discovery at this time. However, MSSC is prepared to discuss objections during the December 8, 2009 hearing.

Plaintiffs' position with regard to MSSC proposed Expert Discovery.

MSSC is not aware of any current objections to this proposed discovery at this time. However, MSSC is prepared to discuss objections during the December 8, 2009 hearing.

D. DISCOVERY DISPUTES.

None at this time

DATED: This 7th day of December, 2009.

MARQUIS & AURBACH

By: /s/ Jason M. Gerber

ALBERT G. MARQUIS, ESQ.
Nevada State Bar No. 1919
JASON M. GERBER, ESQ.
Nevada Bar No. 9812
10001 Park Run Drive
Las Vegas, Nevada 89145

CERTIFICATE OF MAILING

I hereby certify that on the 7th day of December, 2009, I served a copy of the foregoing
MEMORANDUM CONCERNING DISCOVERY MEET AND CONFER REQUIRED BY
DOCKET NO. 173 upon each of the parties by e-mail and by depositing a copy of the same in a
sealed envelope in the United States Mail, Las Vegas, Nevada, First-Class Postage fully prepaid,
and addressed to:

Alexander Robertson, IV
Jennifer L. Taylor
ROBERTSON & VICK, LLP
401 North Buffalo Drive, Suite 202
Las Vegas, NV 89145

Jan Adam Greben
GREBEN & ASSOCIATES
1332 Anacapa Street, Suite 110
Santa Barbara, CA 93101
Attorneys for Plaintiffs

Kevin A. Brown
Whitney C. Wilcher
THAGARD REISS & BROWN, LLP
5528 South Fort Apache Road
Las Vegas, NV 89148
Attorneys for Defendant Maryland Square LLC

Jeffrey R. Diver
JEFFREY R. DIVER, P.C.
437 Anthony Street
Glen Ellyn, IL 60137

Randolph L. Howard
Joseph G. Went
KOLESAR & LEATHAM, CHTD.
3320 W. Sahara Avenue, Suite 380
Las Vegas, NV 89102
Attorneys for Defendant CB Richard Ellis

Neil J. Beller, Esq.
LAW OFFICES OF NEIL J. BELLER, ESQ.
7408 W. Sahara Avenue
Las Vegas, NV 89101

Jeffrey T. Oberman, Esq.
LEVIN & OBERMAN
361 N. Canon Dr.
Beverly Hills, CA. 90210-4704

Jeremy Gilman, Esq.
BENESCH FRIEDLANDER COPLAN &
ARONOFF, LLP
200 Public Square
Suite 2300
Cleveland, OH 44114-2378
*Attorney for Defendants MELVIN SHAPIRO,
Individually, and SHAPIRO BROS.
INVESTMENT CO., a dissolved Nevada
corporation*

and that there is a regular communication by mail between the place of mailing and the place(s)
so addressed.

/s/ Roxanne Minnick
An employee of Marquis & Aurbach